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#21
 P.B. 10/25/03
 RCE

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TELEFACSIMILE TRANSMISSION TO U.S. PATENT & TRADEMARK OFFICE

Name of Sender: Arthur M. Antonelli

November 25, 2003

Pages (including this page) 4

Our Reference: 8932-114

Name/ Title of Recipient	Department/ Company	Facsimile Number	Your Reference
Clerk of the Board	USPTO	(703) 308-6199	09/497,123

Confirmation Copy Will not follow.

U.S. Application of:

Application of: MESSERLI et al.

Confirmation No.

NOV 25 2003

Serial No.: 09/497,123

Art Unit: 3738

NO OF PATENT-APPEALS
 NO INTERFERENCES

Filed: February 3, 2000

Examiner: Brian E. Pellegrino

For: END MEMBER FOR A BONE
 FUSION IMPLANT

Attorney Docket No: 8932-114

Name or type of paper being transmitted: Communication Concerning Filing of Request for Continued Examination, Courtesy Copy of Request for Continued Examination (RCE), and first page of the Amendment.

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CERTIFICATION OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8(a)

I hereby certify that this paper is being filed with the United States Patent and Trademark Office by facsimile transmission on November 25, 2003 to facsimile telephone number (703) 308-6199.

Arthur M. Antonelli 11/25/2003
 Arthur M. Antonelli

51,410
 (Reg. No.)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application of: MESSERLI *et al.*

Application No.: 09/497,123

Filed: February 3, 2000

For: END MEMBER FOR A BONE FUSION
IMPLANT

Confirmation No.:

Group Art Unit: 3738

Examiner: Brian E. Pellegrino

Attorney Docket No.: 8932-114

**COMMUNICATION CONCERNING
FILING OF REQUEST FOR CONTINUED EXAMINATION**

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the Decision on Appeal mailed September 26, 2003, a Request for continued examination (RCE) under 37 § 1.114 is being filed with the Examiner, concurrently with this communication. A courtesy copy of the request for continued examination and the first page of the amendment filed therewith is provided as "Attachment A". Applicants respectfully inform the Board of the filing of the timely Request for continued examination to avoid any inadvertent termination of proceedings in this application.

No fee is believed due for this submission, however, should any fees be required, please charge such fees to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,

Date November 25, 2003

For: Brian M. Rothery
Arthur M. Antonelli
For: Brian M. Rothery

Reg. No. 51,410
Reg. No. 35,340

CERTIFICATION OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8(a)

I hereby certify that this paper is being filed with the United States Patent and Trademark Office Before the Board of Patent Appeals and Interferences by facsimile transmission on November 25, 2003 to facsimile telephone number (703) 308-6199.

Arthur M. Antonelli
Arthur M. Antonelli

11/25/2003

51,410
(Reg. No.)

PTO/SB/30 (5/2000)

Approved for use through 12/31/2000. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Subsection (b) of 35 U.S.C. § 132, effective on May 29, 2000,
provides for continued examination of an utility or plant application
filed on or after June 8, 1995.

See The American Inventors Protection Act of 1999 (AIPA).

Express Mail No.

Application Number

Filing Date

First Named Inventor

Group Art Unit

Examiner Name

Attorney Docket No.

09/497,123

February 3, 2000

MESSERLI et al.

3738

Brian E. Pellegrino

8932-114

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.
NOTE: 37 C.F.R. § 1.114 is effective on May 29, 2000. If the above-identified application was filed prior to May 29, 2000, applicant may wish to consider filing a continued prosecution application (CPA) under 37 C.F.R. § 1.53 (d) (PTO/SB/29) instead of a RCE to be eligible for the patent term adjustment provisions of the AIPA. See Changes in Application Examination and Provisional Application Practice, Interim Rule, 65 Fed. Reg. 14865 (Mar. 20, 2000), 1233 Off. Gaz. Pat. Office 47 (Apr. 11, 2000), which established RCE practice.

1. Submission required under 37 C.F.R. § 1.114

- a. ☐ Previously submitted
- i. ☐ Consider the amendment(s)/reply under 37 C.F.R. § 1.116 previously filed on _____
(Any unentered amendment(s) referred to above will be entered).
- ii. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed _____
- iii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103(c) for a period of _____ months.
(Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(f) required)
- b. ☐ Other _____

3. Fees

- The RCE fee under 37 C.F.R. § 1.17(c) is required by 37 C.F.R. § 1.114 when the RCE is filed
- a. ☒ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Pennie & Edmonds LLP Deposit Account No. 16-1150:
- i. ☒ RCE fee required under 37 C.F.R. § 1.17(c), estimated to be \$ 770.00
- ii. ☐ Extension of time fee required under 37 C.F.R. §§ 1.136 and 1.17, estimated to be \$ _____ for a _____ month extension, the request for which is being made herewith
- iii. ☐ Other _____
- b. ☐ Check in the amount of \$ _____ enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	Arthur M. Antonelli For: Brian M. Rothery	Registration No. (Attorney/Agent)	41,510 35,340
Signature	<i>Brian M. Rothery</i>	Date	November 25, 2003

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner For Patents, P.O. Box 1450, Mail Stop RCE, Alexandria, VA 22313-1450, or by facsimile transmitted to fax no. 1-703- _____ to the U.S. Patent and Trademark Office on the date indicated below.

Name (Print/Type)		Registration No. (Attorney/Agent)	
Signature		Date	

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEApplication of: **MESSERLI *et al.***

Confirmation No.:

Application No.: 09/497,123

Group Art Unit: 3738

Filed: February 3, 2000

Examiner: Brian E. Pellegrino

For: **END MEMBER FOR A BONE FUSION
IMPLANT**

Attorney Docket No.: 8932-114

AMENDMENT

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the Decision on Appeal mailed September 26, 2003 and the Office Action mailed February 28, 2002, please enter the following amendments and remarks into the above-identified application for the Examiner's review and consideration. A request for continued examination (RCE) under 35 C.F.R. § 1.114(a)(3) is being filed concurrently herewith. A courtesy copy of the Request for Continued Examination and the first page of the Amendment is also being submitted concurrently to the Board of Patent Appeals and Interferences to inform the Board of this timely request for continued examination. A copy of the communication to the Board is provided herewith as "Attachment A."

DCI: 359484.1